



January 23, 2004

HOUSE BILL No. 1197

DIGEST OF HB 1197 (Updated January 21, 2004 3:26 pm - DI 105)

Citations Affected: IC 35-37.

Synopsis: Admissibility of videotape of a senior citizen. Provides that a statement or videotape made by an individual at least 65 years of age is admissible in certain criminal trials if: (1) the statement or videotape is reliable; and (2) the individual either testifies at trial or is unavailable. Expands the class of criminal cases in which an individual's statement or videotape may be admissible to include battery, theft, conversion, exploitation of a dependent or endangered adult, and child exploitation.

Effective: July 1, 2004.

**Dickinson, Porter, Becker,
Van Haaften**

January 13, 2004, read first time and referred to Committee on Courts and Criminal Code.
January 22, 2004, reported — Do Pass.

C
o
p
y

HB 1197—LS 7178/DI 106+



January 23, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1197

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-37-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) This section applies to a criminal action under the following:

(1) Sex crimes (IC 35-42-4).

(2) Battery ~~upon a child (IC 35-42-2-1(2)(B))~~: **(IC 35-42-2-1)**.

(3) Kidnapping and confinement (IC 35-42-3).

(4) **Theft (IC 35-43-4-2)**.

(5) **Conversion (IC 35-43-4-3)**.

(6) Incest (IC 35-46-1-3).

~~(5)~~ (7) Neglect of a dependent (IC 35-46-1-4).

~~(6)~~ (8) **Exploitation of a dependent or endangered adult (IC 35-46-1-12)**.

(9) **Child exploitation (IC 35-42-4-4)**.

(10) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through ~~(5)~~: **(9)**.

(b) As used in this section, "protected person" means:

(1) a child who is less than fourteen (14) years of age; ~~or~~

HB 1197—LS 7178/DI 106+



C
o
p
y

(2) a mentally disabled individual who has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:

(A) is manifested before the individual is eighteen (18) years of age;

(B) is likely to continue indefinitely;

(C) constitutes a substantial impairment of the individual's ability to function normally in society; and

(D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; **or**

(3) an individual at least sixty-five (65) years of age.

(c) A statement or videotape that:

(1) is made by a person who at the time of trial is a protected person;

(2) concerns an act that is a material element of an offense listed in subsection (a) that was allegedly committed against the person; and

(3) is not otherwise admissible in evidence;

is admissible in evidence in a criminal action for an offense listed in subsection (a) if the requirements of subsection (d) are met.

(d) A statement or videotape described in subsection (c) is admissible in evidence in a criminal action listed in subsection (a) if, after notice to the defendant of a hearing and of ~~his~~ **the defendant's** right to be present, all of the following conditions are met:

(1) The court finds, in a hearing:

(A) conducted outside the presence of the jury; and

(B) attended by the protected person;

that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability.

(2) The protected person:

(A) testifies at the trial; or

(B) is found by the court to be unavailable as a witness for one

(1) of the following reasons:

(i) From the testimony of a psychiatrist, physician, or psychologist, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate.

(ii) The protected person cannot participate in the trial for

C
o
p
y



1 medical reasons.

2 (iii) The court has determined that the protected person is
3 incapable of understanding the nature and obligation of an
4 oath.

5 (e) If a protected person is unavailable to testify at the trial for a
6 reason listed in subsection (d)(2)(B), a statement or videotape may be
7 admitted in evidence under this section only if the protected person was
8 available for cross-examination:

9 (1) at the hearing described in subsection (d)(1); or

10 (2) when the statement or videotape was made.

11 (f) A statement or videotape may not be admitted in evidence under
12 this section unless the prosecuting attorney informs the defendant and
13 the defendant's attorney at least ten (10) days before the trial of:

14 (1) ~~his~~ **the prosecuting attorney's** intention to introduce the
15 statement or videotape in evidence; and

16 (2) the content of the statement or videotape.

17 (g) If a statement or videotape is admitted in evidence under this
18 section, the court shall instruct the jury that it is for the jury to
19 determine the weight and credit to be given the statement or videotape
20 and that, in making that determination, the jury shall consider the
21 following:

22 (1) The mental and physical age of the person making the
23 statement or videotape.

24 (2) The nature of the statement or videotape.

25 (3) The circumstances under which the statement or videotape
26 was made.

27 (4) Other relevant factors.

C
o
p
y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1197, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

DVORAK, Chair

Committee Vote: yeas 11, nays 1.

**C
o
p
y**

